

***United States Court of Appeals  
for the Second Circuit***



**PETITION FOR  
REHEARING  
EN BANC**



# 74-2483

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pays

RECEIVED  
MAR 31 1975  
U.S. COURT OF APPEALS  
SECOND CIRCUIT

In The  
**United States Court of Appeals**  
For The Second Circuit

UNITED STATES OF AMERICA,

*Appellee,*

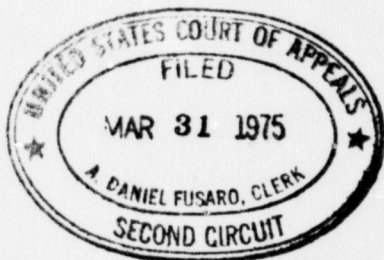
- against -

ALLEYNE F. ROBINSON, JOSE ANTONIO ACOSTA  
ALVAREZ, a/k/a JOSE ANTONIO, a/k/a JOSE ACOSTA  
and JOSEPH M. VILLEGAS,

*Defendants-Appellants.*

*On Appeal from the United States District Court for the  
Southern District of New York*

**PETITION FOR REHEARING WITH  
SUGGESTION FOR REHEARING EN BANC**



LOUIS NOAH FORMAN  
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UNITED STATES COURT OF APPEALS  
FOR THE  
SECOND CIRCUIT

- - - - - x

UNITED STATES OF AMERICA,

Appellee,

-against-

74 Cr. 459

ALLEYNE F. ROBINSON,  
JOSE ANTONIO ACOSTA ALVAREZ,  
a/k/a JOSE ANTONIO, a/k/a  
JOSE ACOSTA and  
JOSEPH M. VILLEGAS,

Defendants-Appellants.

- - - - - x

PETITION FOR REHEARING  
WITH SUGGESTION FOR  
REHEARING EN BANC

Defendant-Appellant JOSE ANTONIO ACOSTA ALVAREZ  
(hereinafter ALVAREZ) petitions the Court for a rehearing  
with suggestion for rehearing en banc from the judgment of  
this Court affirming his conviction for violation of 29  
U.S.C. Section 5019c) which judgment was entered on March  
17, 1975.

The Court, HONS. ANDERSON, MULLIGAN, and VAN  
GRAAFEILAND, affirmed the conviction of ALVAREZ entered in  
the United States District Court for the Southern District  
of New York, Hon. Dudley B. Bonsal, Judge, for conspiracy



to violate, and actual violations of 29 U.S.C. §501(c), which prohibits embezzlement, theft or conversion by a union officer or employee of any of the money or other property of a union.

The indictment in various counts charged the three defendants with a conspiracy to violate, as well as substantive violations of, 29 U.S.C. §501(c) by the conversion of the property of the National Maritime Union (NMU), where Robinson served as an official and his co-defendants as employees. The defendants were convicted on all counts on which they were tried. Robinson received a one-year suspended sentence, was placed on probation for one year and fined a total of \$1000 to be paid during the year of probation. ALVAREZ and VILLEGAS were sentenced to probation for three months and a fine of \$250 to be paid within that time.

THE COURT OVERLOOKED AND FAILED TO  
CONSIDER ALVAREZ' ARGUMENT THAT HE  
IS NOT A PERSON IN TITLE 29 U.S.C.  
§501(c) SUBJECT TO THE PROVISIONS  
THEREOF AND SHOULD NOT HAVE  
BEEN INDICTED, TRIED AND CONVICTED  
UNDER THAT SECTION

In its decision the Court held:

"The only argument raised on appeal which merits discussion is the position taken by all

the appellants that the conduct which was the basis for the indictment and conviction here does not constitute a crime under 29 U.S.C. §501(c)."

This limitation of the issue was merely in reference to the Appellants' argument that the forms which they allegedly converted were of no value as to constitute a conversion of property or funds and thereby subject themselves to the penalties of the law. (Page 2327).

The Court overlooked the fact and the issue raised by ALVAREZ that he is not one of those persons described or intended by Chapter 11 of Title 29 entitled LABOR-MANAGEMENT REPORTING AND DISCLOSURE PROCEEDING.

Section 501(c) must be read in conjunction with Section 501(a) which reads:

"Section 501(a) provides in pertinent part as follows:

The officer, s agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder, to refrain from dealing with such organization as an adverse party or in behalf of an adverse party in any matter connected with his duties and from holding or acquiring any pecuniary or personal interest which conflicts with the



interest of such organization, and to account to the organization for any profit received by him in whatever capacity in connection with transactions conducted by him or under his direction on behalf of the organization."

Section 501(c) provides:

"Any person who embezzles, steals, or unlawfully and willfully abstracts or converts to his own use, or the use of another, any of the moneys, funds, securities, property, or other assets of a labor organization of which he is an officer, or by which he is employed, directly or indirectly, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both."

Essentially and patently the purpose of the legislation was to create a body of law whereby union officials and its officers were declared to have positions of trust with respect to union funds and property. It had no application to its mere members and non-official employees. ALVAREZ was a hired employee enjoying the title of Master-at-Arms and whose principle responsibility was to act as a guard at the union hall, and therefore beyond the purview of the Act.

Dated: New York, New York  
March 28, 1975

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Defendant-Appellant  
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Court of Appeals  
2<sup>nd</sup> Circuit

REVISED  
Affidavit



THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

- against -

ALLEYNE F. ROBINSON, etal.,

Defendants-Appellants.

Docket  
Index No. 74 2483

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF New York

ss.:

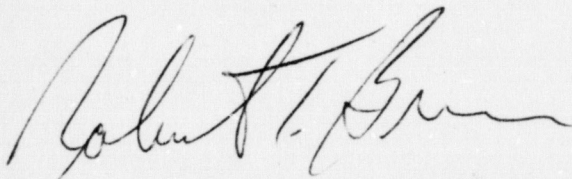
I, James Steele, being duly sworn,  
depose and say that deponent is not a party to the action, is over 18 years of age and resides at  
250 West 146th, Street, New York, New York  
That on the 31st day of March 19 75 at Foley Square, N. Y., N. Y.

deponent served the annexed Petition for Rehearing upon

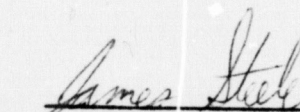
Paul J. Curran

the Attorney in this action by delivering <sup>ss</sup> a true copy thereof to said individual  
personally. Deponent knew the person so served to be the person mentioned and described in said  
papers as the Attorney(s) herein,

Sworn to before me, this 31st  
day of March 19 75



ROBERT T. BRIN  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 81 - 0118050  
QUALIFIED IN NEW YORK COUNTY  
COMMISSION EXPIRES MARCH 30, 1975



JAMES STEELE

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AND  
(copy) SAMUEL M. ZUCKERMAN Esq.  
570 - 7TH AVE  
N.Y. N.Y.  
ATTNY FOR DEPT-Respt, Robinson

THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

- against -

ALLEYNE F. ROBINSON, et al.,

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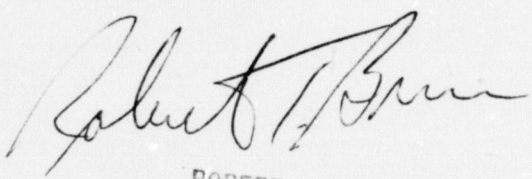
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Paul J. Curran

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Sworn to before me, this 31st  
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JAMES STEELE

  
ROBERT T. BRIN  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 31 - 0413370  
QUALIFIED IN NEW YORK COUNTY  
COMMISSION EXPIRES MARCH 30, 1976